

FILED**JUDGE KOCORAS
MAG. JUDGE ASHMAN**NOV 13 2007 *new*

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**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District Northern District of Illinois
Name of Movant Edward Lee Jackson, Jr.	Prisoner No. 07546-424	Case No. 96CR815-1
Place of Confinement Federal Correctional Institution, P.O. Box 1000, Cumberland, MD 21501-1000		

UNITED STATES OF AMERICA

V. **EDWARD LEE JACKSON, JR, ET AL.**
(name under which convicted)**MOTION**

- Name and location of court which entered the judgment of conviction under attack United States District Court, Northern District of Illinois, Chicago, IL.
- Date of judgment of conviction October 18, 2001
- Length of sentence 1,380 months
- Nature of offense involved (all counts) Conspiracy to violate the Hobbs Act (18 USC § 1951(a));
Violation of Hobbs Act (18 USC § 1951(a)); Use of Firearm (18 USC § 924(c));
Conspiracy to Distribut Controlled Substance (21 USC § 846); Possession of Controlled
Substance With Intent to Distribute (21 USC § 841); RICO Violations (18 USC § 1961,
et seq.).
- What was your plea? (Check one)
 - Not guilty ☒
 - Guilty ☐
 - Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

N/A
- If you pleaded not guilty, what kind of trial did you have? (Check one)
 - Jury ☒
 - Judge only ☐
- Did you testify at the trial?
Yes ☒ No ☐
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐

AO 243 (Rev. 5/85)

9. If you did appeal, answer the following:

(a) Name of court U.S. Court of Appeals for the Seventh Circuit(b) Result Conviction and Sentence Affirmed(c) Date of result April 9, 2004

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court United States Supreme Court(2) Nature of proceeding Petition for Writ of Certiorari(3) Grounds raised Government failed to prove nexus to interstate commerce; evidence was insufficient to support conviction on weapons violations; evidence was insufficient to support conviction for drug conspiracy & distribution offenses; sentence imposed in violation of Sixth Amendment, as interpreted in U.S. v. Booker.(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒(5) Result Certiorari granted, case remanded for reconsideration of sentence in light of Booker.(6) Date of result January 24, 2005

(b) As to any second petition, application or motion give the same information:

(1) Name of court United States Supreme Court(2) Nature of proceeding Petition for Writ of Certiorari(3) Grounds raised Sentence imposed in violation of Booker.

(3)

AQ 243 (Rev. 5/85)

- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result Certiorari denied.

(6) Date of result October 2, 2006

- (c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?
- (1) First petition, etc. Yes ☒ No ☐
- (2) Second petition, etc. Yes ☒ No ☐
- (See the attached page (7) for explanation.)
- (d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

(4)

AO 243 (Rev. 5/85)

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: CONVICTION WAS OBTAINED IN VIOLATION OF PETITIONER'S RIGHT
TO DUE PROCESS OF LAW, U.S. CONSTITUTION AMENDMENT V.

Supporting FACTS (state *briefly* without citing cases or law) _____

(See attached page (7) for explication/explanation.)

B. Ground two: CONVICTION WAS OBTAINED IN VIOLATION OF PETITIONER'S RIGHT
TO A FAIR TRIAL, U.S. CONSTITUTION AMENDMENT VI.

Supporting FACTS (state *briefly* without citing cases or law): _____

(See attached page (7) for explication/explanation.)

C. Ground three: PETITIONER WAS DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL
AT TRIAL, IN VIOLATION OF U.S. CONSTITUTION AMENDMENT VI.

Supporting FACTS (state *briefly* without citing cases or law): _____

(See attached page (8) for explication/explanation.)

AO 243 (Rev. 5/85)

- D. Ground four: PETITIONER WAS DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL
ON DIRECT APPEAL, IN VIOLATION OF U.S. CONSTITUTION AMENDMENT VI.

Supporting FACTS (state *briefly* without citing cases or law): _____

(See attached page (3) for explication/explanation.)

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

Ground one was not previously presented because the basis of the claim(s) was only
recently discovered. Grounds three and four were not previously presented because
of the general rule that ineffective assistance claims should be made in collateral
attack.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
 Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Joan Hill McClain, Esq.

(b) At arraignment and plea Joan Hill McClain, Esq.

(c) At trial Joan Hill McClain, Esq.

(d) At sentencing Kent R. Carlson, Esq., 55 W. Jackson Blvd., Ste. 1544,
Chicago, IL 60604

AO 243 (Rev. 5/85)

(e) On appeal Kent R. Carlson, Esq.

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

N/A

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐ N/A

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

28 Sept 07
(date)

Edmund L. Jackson Jr.
Signature of Movant

Edward Lee Jackson, Jr.
Motion Under 28 USC § 2255 (cont'd)

11. (c) On remand following the grant of certiorari, the district court decided it would have imposed the same sentence even if the Sentencing Guidelines were not mandatory. I appealed that decision to the Seventh Circuit Court of Appeals; the appeal was denied.

Following the denial of my second Petition for Writ of Certiorari, I petitioned the Supreme Court for rehearing and requested Justice Stevens to suspend the "Order of Denial" pending a decision as to rehearing. The petition for rehearing was denied on November 13, 2006. My request for suspension of the Order denying certiorari was returned to me by the Court Clerk on November 15, 2006.

12. A. Ground One/Supporting Facts: (cont'd from page (4))

Testimony of government witnesses at trial established that the investigation leading to Petitioner's arrest and conviction was initiated on a specific date. Government's records recently disclosed to Petitioner indicate that the investigation actually began much earlier than represented at trial. The recently disclosed record reasonably supports Petitioner's belief that material evidence (including additional records of interviews/deals with informants/witnesses) was withheld from the defense in violation of Brady v. Maryland, and provides a basis for concluding that, given an opportunity to develop all the relevant facts, Petitioner may be able to demonstrate entitlement to vacature of his conviction.

Petitioner notes that his ability to present facts in support of "Ground One claim(s)" has also been prohibited by lack of access to case records over which he has not control.

For the foregoing reasons, Petitioner requests the Court to regard the instant motion as a "placeholder," to be amended by Petitioner after reasonable opportunity to review records and discover facts.

- B. Ground Two/Supporting Facts: (cont'd from page (4))

The trial court prevented the defense from cross-examining informants and police officers whose statements inculcating Petitioner were admitted at trial, a violation of the Sixth Amendment's Confrontation Clause. The trial judge also prevented the jury from hearing evidence/facts surrounding dismissal of a Count in the indictment, which could have been used to impeach Government's case against Petitioner.

Petitioner notes that his ability to present additional facts in support of "Ground Two claim(s)" has been prohibited by lack of access to case which have been withheld from him by former counsel. For that reason, Petitioner requests the Court to regard the instant motion as a "placeholder," to be amended after Petitioner is afforded a reasonable opportunity to review the record.

Edward Lee Jackson, Jr.
§ 2255 motion (cont'd)

12. C. Ground Three/Supporting Facts:

Trial counsel labored under a conflict of interest which was brought to the court's attention but was not handled by waiver hearing. Counsel failed to object to the exclusion of key witnesses from testifying at trial. Trial Counsel failed to object to introduction in evidence of various audio and video tapes which were either shown to be false or were admitted in the absence of any opportunity to cross-examine actual participants. Counsel failed to withdraw from the case even though she knew she was not providing adequate representation; that is, counsel was under medication and admitted it was affecting her adversely during trial. Counsel failed to make a full and complete investigation into the facts of the case.

Petitioner notes that his ability to present additional facts in support of "Ground Three claim(s)" has been prohibited by lack of access to case records which have been withheld from him by former counsel. For that reason, Petitioner requests the Court to regard the instant motion as a "placeholder," to be amended after Petitioner is afforded a reasonable opportunity to review the record.

D. Ground Four/Supporting Facts:

Appellate counsel failed to raise issue of Confrontation Clause violations, though such violation were obvious and Petitioner repeatedly asked counsel to do so. Counsel refused to argue other meritorious issues which would have caused a different outcome in the case on appeal.